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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 301

GERALD B. BAUMAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING

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Petitioner respectfully prays that this Honorable Court grant a rehearing with respect to its Order denying the Petition for a Writ of Certiorari herein. Notice of the Court's denial of the Petition was given on November 11, 1975, only about three weeks after the respondent had filed its Memorandum in Opposition thereto. In the meantime, counsel had carefully reviewed with the petitioner the Memorandum in Opposition and had drafted a reply, addressed to certain facts believed to be essential for the Court's full consideration of the Petition. The Court's very prompt decision, in a time period much shorter than that which counsel had been advised would

normally be taken, has denied petitioner the opportunity to bring such facts to the attention of the Court. Accordingly, petitioner respectfully solicits that a rehearing be granted under the provisions of Rule 58(2). The present petition is being presented in good faith and solely for the purposes set forth above, rather than for any purpose of delay.

In its opposition to the Petition for a Writ of Certiorari, the United States relied exclusively on the premise that careful consideration had been given to petitioner's case by the Primary Examiner, the Board of Appeals, and the United States Court of Customs and Patent Appeals. The respondent thereupon invoked the authority of this Court's decision in *Graham v. John Deere Co.*, 383 U.S. 1, to the effect that a finding of obviousness should be deemed correct when it is based "upon a careful comparison between the scope and content of the prior art and the claimed invention, in light of the level of ordinary skill in the art" (*id* at 17).

Manifestly, no such careful consideration had been made in the present case. In the first place, the Court below did not specifically address itself to the basic claim under consideration (Claim 17). Rather, its comments were predicated upon reference to subject matter in the specification but *not* incorporated in the basic claim. The Court had in effect addressed itself to a feature that was actually incorporated only in a subsidiary claim, one directed to the manner in which the petitioner's basic system might be modified to adapt it for even broader usage. Thus, the Court's comments, while perhaps appropriate with respect to the subsidiary claim, had no bearing whatsoever on the subject matter of the basic claim.

This being the case, the Court below had utterly failed to address the critical features relied upon by petitioner in seeking patent protection, i.e., a multi-tiered grid system with successive tiers having *identical* patterns and the grids of each tier being identified by an *identical* system of indicators.

To recognize that this basic concept was totally new to the art, one need only refer to the basic differences between the embodiment of the Baugh reference and that of the petitioner's application. The petitioner's embodiment utilizes the maximum number of grid divisions for a full range of digits, whereas the Baugh embodiment utilizes as little as four. The petitioner's system uses a single uniform code, whereas Baugh employs different codes on different tiers. The petitioner's system provides for a resultant code number that is meaningful in and of itself to locate areas, sections and even specific plots of land without the use of an index or the like, whereas Baugh has no such concept.

The significance of the foregoing distinctions is not merely academic, and is certainly not the wishful thinking of an inventor nor the imaginative arguments of his counsel. The respective disclosures are sufficient themselves to establish that the petitioner, on the one hand, has a system adapted for geocoding in a sensible, useful way the entire surface of the earth, with the code still serving to pinpoint a particular lot or address thereon. The Baugh system, on the other hand, could not conceivably do so because it involves such a cumbersome and unmeaningful code and because it is limited in most instances to quadrant divisions. The latter fact would in a practical sense limit the use of the Baugh's disclosed system to perhaps 32 square miles, which is merely a township's dimension.

Still further, petitioner's disclosed system is manifestly capable of replacing and improving upon the ZIP Code system of the Postal Service or the DIME system of the Census Department. Baugh does not even hint at such applications and his disclosed system would be incapable of achieving such results.

CONCLUSION

In view of the foregoing, it is submitted that the Court has utterly failed to pass on the patent claims that were before it and it has therefore necessarily failed to apply the law as promulgated by statute and interpreted by this Court. Still further, the Solicitor General has failed to focus on these deficiencies in his opposing Memorandum. Since these factors were not fully presented before this Honorable Court at the time of its decision on the initial Petition, it is respectfully submitted that a rehearing is necessary in this case.

Respectfully submitted,

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